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6 UNITED STATES DISTRICT COURT  
7 SOUTHERN DISTRICT OF CALIFORNIA  
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9 EMBOTELLADORA ELECTROPURA  
10 S.A. de C.V., an El Salvador corporation,  
11 Plaintiff,  
12 v.  
13 ACCUTEK PACKAGING EQUIPMENT  
14 COMPANY, INC., a California  
15 corporation; and DOES 1 through 25,  
16 inclusive,  
17 Defendant.

Case No.: 3:16-cv-00724-GPC-MSB

**ORDER GRANTING DEFENDANT'S  
RENEWED MOTION FOR  
JUDGMENT AS A MATTER OF  
LAW**

**[ECF No. 158]**

18 On February 13, 2020, Defendant Accutek Packaging Equipment Company  
19 ("Accutek") filed a Renewed Motion for Judgment as a Matter of Law pursuant to  
20 Federal Rule of Civil Procedure 50(b). (ECF No. 158.) On March 20, 2020, Plaintiff  
21 Embotelladora Electropura ("Electropura") filed an opposition to Accutek's motion.  
22 (ECF No. 163.) Accutek filed a reply on March 30, 2020. ECF No. 164. Based on the  
23 parties' papers, the applicable law, and the reasons set forth below, the Court **GRANTS**  
24 Accutek's Renewed Motion for Judgment as a Matter of Law.

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1 **I. Background**<sup>1</sup>

2 The parties' dispute arises out of Accutek's sale of an allegedly defective Biner  
3 Ellison water bottling machine (the "Monoblock") to Electropura. Accutek is a  
4 California corporation that develops and manufactures complete packaging solutions, and  
5 offers a wide variety of filling machines, capping machines, labeling machines, and  
6 complete packaging systems. (ECF No. 157.) Electropura is a bottled water corporation  
7 in El Salvador. (*Id.*) Due to the Monoblock's alleged deficiencies and defects,  
8 Electropura filed an action, alleging seven claims against Accutek. (*Id.* at 2-3.)

9 **A. Trial**

10 From October 28 to November 7, 2018, the Court conducted a seven-day trial.  
11 (ECF No. 116.) On November 5, 2018, at the close of Electropura's case-in-chief and  
12 prior to the jury returning a verdict, Accutek moved orally for judgment as a matter of  
13 law pursuant to Federal Rule of Civil Procedure 50(a). (ECF No. 110.) The Court  
14 requested that the motion be briefed in writing and deferred ruling on the motion until  
15 after the jury completed its deliberation and issued its special verdicts. (*Id.*) That same  
16 day, Accutek filed a written Motion for Judgment as a Matter of Law, arguing  
17 Electropura's fraud claims, including its intentional misrepresentation claim, failed as a  
18 matter of law and that the lack of fraud required dismissal of Electropura's unjust  
19 enrichment claim. (ECF No. 111.) This written motion addressed "out of pocket" and  
20 consequential damages (ECF No. 111-1 at 7-8), but did not address the issue of punitive  
21 damages.

22 On November 9, 2018, the jury returned a verdict in favor of Electropura for  
23 intentional misrepresentation, among others. (ECF No. 118.) After the return of the  
24 verdict, Electropura, for the first time during the litigation of the case, requested current  
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27 <sup>1</sup> The Court assumes the parties' familiarity with the facts of this case, and includes only a summary of  
28 relevant facts and procedural developments necessary to decide Accutek's Renewed Motion for  
Judgment as a Matter of Law. The Court has previously recounted in full the factual and procedural  
background. *See* ECF No. 157.

1 financial statements from Accuthek to ascertain Accuthek's current net worth to introduce  
2 at the punitive damages phase for the jury's assessment of the appropriate amount of  
3 punitive damages. (ECF No. 158-2 at 5-6.) Accuthek argued it was not Accuthek's burden  
4 to produce these financial statements given that Electropura had failed to request the  
5 financial statements during discovery. (*Id.* at 6.) In addition, Accuthek reported that it  
6 would need time to contact the corporation's president to obtain the requested financial  
7 statements. (*Id.*)

8 The Court found that Electropura would have been entitled to the financial  
9 statements during discovery because it had requested punitive damages in its complaint.  
10 (*Id.*) However, since Electropura had failed to seek these documents, the Court  
11 concluded that it would proceed with the punitive damages phase on November 9, 2018  
12 and not reopen discovery or delay the proceedings. (*Id.* at 8.)

13 Before Plaintiff began presenting evidence at the punitive damages phase, the  
14 parties and the Court discussed the issue of Accuthek's net worth. Electropura claimed the  
15 Ninth Circuit model jury instructions did not require evidence of Accuthek's net worth for  
16 purposes of the jury assessing punitive damages. (*Id.* at 9.) Accuthek, on the other hand,  
17 asserted that evidence of Accuthek's net worth was required for the jury to assess punitive  
18 damages. (*Id.*) The Court did not decide the issue and invited counsel to brief the issue  
19 after relieving the jury. (*Id.*)

20 During the punitive damages phase of trial, Electropura asked questions of one  
21 witness, Electropura's employee Orlando Perla. (ECF No. 157 at 24.) Perla  
22 acknowledged he had no personal knowledge of Accuthek's financial condition. (*Id.*)  
23 Perla also admitted he had been told nothing about Accuthek's financial strength. (*Id.*)  
24 Electropura's proof about Accuthek's financial condition consisted of Accuthek's financial  
25 wherewithal to be a company that Electropura would conduct business with. (ECF No.  
26 158-2 at 17:24-18:4.) Specifically, Perla testified that he had seen Accuthek at  
27 international shows, including Mexico. (*Id.* at 18:2-4.) Accuthek did not renew its  
28 challenge to the sufficiency of evidence in the punitive damages phase or at the close of

the presentation of evidence during this phase. The jury awarded Electropura \$525,000 in punitive damages on November 9, 2018. (ECF No. 119 at 2.)

**B. Post-Trial**

On December 3, 2018, Electropura filed its opposition to Accuthek's Motion for Judgment as a Matter of Law. (ECF No. 126.) On December 5, 2018, Accuthek filed a reply. (ECF No. 129.) On December 9, 2018, Accuthek filed a Motion for a New Trial. (ECF No. 130.) In moving for a new trial, Accuthek contended that Electropura's intentional misrepresentation claim failed as a matter of law and that Electropura failed to present sufficient evidence to justify the jury's punitive damages award. (*Id.*) On December 26, 2018, Electropura filed an opposition to Accuthek's motion for a new trial. (ECF No. 134.) On January 4, 2019, Accuthek filed a reply. (ECF No. 135.)

The Court denied Accuthek's Motion for Judgment as a Matter of Law and granted in part Accuthek's Motion for a New Trial. (ECF Nos. 141, 157.)<sup>2</sup> Construing Accuthek's Motion for Judgment as a Matter of Law as a post-verdict motion for judgment as a matter of law under Rule 50(b), the Court concluded that there was sufficient evidence to support the jury's verdict in Electropura's favor on the intentional misrepresentation claim and respective "out of pocket" and consequential damages. (ECF No. 157 at 20-21.) On the same basis, the Court denied Accuthek's Motion for a New Trial regarding the intentional misrepresentation claim and respective "out of pocket" and consequential damages. (*Id.* at 21.)

However, the Court further found that the jury's finding of punitive damages was legally invalid under California law and should be vacated, warranting a new trial on punitive damages. (*Id.*) The Court observed that California state law would have permitted entry of judgment as a matter of law in favor of Accuthek on a finding of

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<sup>2</sup> On July 24, 2019, the Court issued an original order, denying Accuthek's Motion for Judgment as a Matter of Law and granting in part Accuthek's Motion for a New Trial on the issue of punitive damages. (ECF No. 141.) On February 13, 2020, the Court issued an amended order, again denying Accuthek's Motion for Judgment as a Matter of Law and granting in part Accuthek's Motion for a New Trial on the issue of punitive damages. (ECF No. 157.)

insufficient evidence to support punitive damages. (*Id.* at 25.) (citing *Baxter v. Peterson* (2007) 150 Cal. App. 4th 673, 692 (where plaintiff had a full opportunity to present his case, and failed to introduce evidence of defendant's financial condition, the evidence was insufficient, punitive damage award reversed, and no retrial of the issue was required)). However, the Court further held that, while California substantive law applies as to determining punitive damages, Federal Rules of Civil Procedure 50 and 59 govern the procedures required in post-trial proceedings in federal court. Since Accuthek only moved for a new trial on this issue, the Court could not rule in favor of Accuthek as a matter of law on punitive damages. (*Id.*)

In response to the Court's order, on February 13, 2020, Accuthek filed a Renewed Motion for Judgment as a Matter of Law on the issue of punitive damages. (ECF No. 158.) On March 20, 2020, Electropura filed an opposition to Accuthek's motion. (ECF No. 163.)

## **II. Discussion**

### **A. Legal Standard**

Rule 50(a) governs motions for judgment as a matter of law, and Rule 50(b) governs renewed motions for judgment as a matter of law. *Xiong v. Chavez*, 2015 WL 345609, at \*2 (E.D. Cal. Jan. 28, 2016). A Rule 50(b) motion "is properly granted 'if the evidence, construed in the light most favorable to the nonmoving party, permits only one reasonable conclusion, and that conclusion is contrary to the jury's verdict.'" *Escriba v. Foster Poultry Farms, Inc.*, 743 F.3d 1236, 1242 (9th Cir. 2014) (citing *Pavao v. Pagay*, 307 F.3d 915, 918 (9th Cir. 2002)). "A jury's verdict must be upheld if it is supported by substantial evidence, which is evidence adequate to support the jury's conclusion, even if it is also possible to draw a contrary conclusion. *Pavao*, 307 F.3d at 918. The court "must review the entire evidentiary record." *Harper v. City of Los Angeles*, 533 F.3d 1010, 1021 (9th Cir. 2008). "[T]he court must not weigh the evidence, but should simply ask whether the [nonmoving party] has presented sufficient evidence to support the jury's

conclusion.” *Id.* (citing *Johnson v. Paradise Valley Unified Sch. Dist.*, 251 F.3d 1222, 1227-28 (9th Cir. 2001)).

A Rule 50(b) motion for judgment as a matter of law “is not a freestanding motion[,]” but “a renewed Rule 50(a) motion.” *E.E.O.C. v. Go Daddy Software, Inc.*, 581 F.3d 951, 961 (9th Cir. 2009). Indeed, a “renewed [Rule 50(b)] motion . . . must be preceded by a [Rule 50(a)] motion . . . that sets forth the specific grounds raised in the renewed [Rule 50(b)] motion.” *Wallace v. City of San Diego*, 479 F.3d 616, 631 (9th Cir. 2007). “The ‘procedural requirement of filing a Rule 50(a) motion before filing a Rule 50(b) motion’ is construed ‘strictly,’ and the ‘failure to file a Rule 50(a) motion precludes consideration of a Rule 50(b) motion for judgment as a matter of law.” *Century Sur. Co. v. Saidian*, 2016 WL 6440140, at \*17 (C.D. Cal. Mar. 16, 2016) (quoting *Tortu v. Las Vegas Metro. Police Dep’t*, 556 F.3d 1075, 1082 (9th Cir. 2009)).

A party may renew a properly made Rule 50(a) motion pursuant to Rule 50(b) “[i]f the judge denies or defers ruling on the motion, and if the jury then returns a verdict against the moving party[.]” *Go Daddy*, 581 F.3d at 961. But, a Rule 50(b) motion is limited to the grounds asserted in its predicate Rule 50(a) motion. *Id.* In other words, “a party cannot properly ‘raise arguments in its post-trial motion for judgment as a matter of law under Rule 50(b) that it did not raise in its preverdict Rule 50(a) motion.’” *Id.* (quoting *Freund v. Nycomed Amersham*, 347 F.3d 752, 761 (9th Cir. 2003) (citations omitted)).

## **B. Analysis**

### **1. Accutek’s Statements Addressing the Necessary Basis for Punitive Damages Qualify as an Inartful Rule 50(a) Motion for Judgment as a Matter of Law**

Accutek’s original Motion for Judgment as a Matter of Law did not address punitive damages. (ECF No. 111.) Instead, Accutek first presented the issue of punitive damages in a Motion for a New Trial filed on December 9, 2018. (ECF No. 130.) In that motion, Accutek challenged the sufficiency of evidence during the punitive damages



1 phase only as a Motion for a New Trial, not as a Motion for Judgment as a Matter of  
 2 Law. It was not until February 13, 2020, that Accutek first raised the issue of punitive  
 3 damages within the context of a Renewed Motion for Judgment as a Matter of Law.  
 4 (ECF No. 158.)

5 Accutek argues that the statements made during the colloquy on the issue of  
 6 punitive damages constitute a Rule 50(a) motion which permits the filing of this renewed  
 7 motion. (ECF No. 158-1 at 5.) Accutek submits that these statements informed Plaintiff  
 8 of its positions on the law and facts required to support a punitive damage award and that  
 9 regardless of the failure to cite Rule 50(a), the Ninth Circuit has accepted “ambiguous or  
 10 inartfully” made motions under Rule 50(a). (ECF 158-1 at 4.) Electropura disagrees,  
 11 contending that nowhere in the colloquy did Accutek make an oral or written motion for  
 12 judgment as a matter of law on the issue of punitive damages. (ECF No. 163 at 10-14.)

13 A Rule 50(a) motion “must specify the judgment sought and the law and facts that  
 14 entitle the movant to the judgment.” Fed. R. Civ. P. 50(a). “The purpose of Rule 50(a) is  
 15 to preserve the question of the sufficiency of the evidence as a question of law so the trial  
 16 court can review its initial denial of judgment as a matter of law and it calls to the  
 17 attention of the court and the opposing party the alleged deficiencies in the evidence  
 18 while there is still the opportunity to correct them.” *In re Taco Bell Wage & Hour*  
 19 *Actions*, 2016 WL 950775, at \*2 (E.D. Cal. Mar. 14, 2016) (citing *Freund v. Nycomed*  
 20 *Amersham*, 347 F.3d 752, 761 (9th Cir. 2003)). The moving party may make the Rule  
 21 50(a) motion orally. *See Nitco Holding Corp. v. Boujikan*, 491 F.3d 1086, 1088 (9th Cir.  
 22 2007) (accepting party’s “orally entered motion under Fed. R. Civ. P. 50(a)”). An  
 23 “‘ambiguous or inartfully made motion’ under Rule 50(a)” after the close of all evidence  
 24 may be sufficient. *Go Daddy*, 581 F.3d at 961 (quoting *Reeves v. Teuscher*, 881 F.2d  
 25 1495, 1498 (9th Cir. 1989)).

26 Prior to the punitive damage phase of trial, the Court held a hearing to address the  
 27 evidence that the Plaintiff intended to offer to prove its case on punitive damages. At  
 28

1 issue was whether Plaintiff was required to offer evidence regarding Accuthek's net worth.

2 The colloquy is as follows:

3 Electropura's Counsel: I am advised or informed the Ninth Circuit model jury  
4 instructions do not require evidence of net worth of the  
5 defendant for purposes of punitive damages.

6 The Court: All right. I am not sure if anyone is of the view that you  
7 have to have evidence of net worth.

8 Accuthek's Counsel: Well, I would simply state, to preserve the record, that  
9 we believe that that would be required as a predicate to  
10 being able to consider punitive damages; otherwise, it is  
11 just pulling out of thin air, and you never know what they  
12 will come up with.

13 The Court: And it may very well be that is the case, but we will have  
14 time afterwards for briefing, and then we can get this jury  
15 done, which I am sure they are looking forward to being  
16 done with by today.

17 (ECF No. 158-2 at 9:4-18.). Here, Accuthek maintains it preserved the right to bring a  
18 Rule 50(b) motion on the issue of punitive damages based on statements made during the  
19 colloquy discussing the essential elements for a punitive damage award. (*Id.* at 5:9-11.)  
20 (ECF No. 158-1 at 4.) Electropura counters that Accuthek never presented an oral motion  
21 for judgment as a matter of law on the issue of the sufficiency of Electropura's punitive  
22 damages. (ECF No. 163 at 10, 14.)

23 Electropura is correct that Accuthek never specifically invoked Rule 50(a) in raising  
24 its position on punitive damages. Despite the inartful motion by Accuthek, the Court finds  
25 that the above exchange reflects Accuthek's factual and legal position that Accuthek's  
26 financial condition was an essential element for a punitive damage award and that  
27 Plaintiff did not have evidence to offer on financial condition since Electropura had failed  
28 to request and obtain Accuthek's financial information and, further, had claimed that it  
was not required to submit financial information. The Court agrees with Accuthek that it  
specified the law and facts that entitled Accuthek to judgment in its favor and that the sum



1 of these actions was a sufficient approximation of a Rule 50(a) to support the renewal of  
 2 the Rule 50(b) motion. *Cf. Villanueva v. McInnis*, 723 F.3d 414, 418 (5th Cir. 1984) (the  
 3 sum of motion for a directed verdict at the end of the nonmoving party's case and  
 4 objections to party's failure to present sufficient evidence "were a sufficient  
 5 approximation of a renewed motion for directed verdict to support [the moving party's]  
 6 later motion for judgment notwithstanding the verdict.")

7 The reason for requiring a motion for a directed verdict at the close of the evidence  
 8 "is to avoid making a trap of the motion for judgment notwithstanding the verdict, either  
 9 at the trial stage or on appeal." *Quinn v. Southwest Wood Products, Inc.*, 597 F.2d 1018,  
 10 1025 (5th Cir. 1979). The *Quinn* court noted:

11 When a claimed deficiency in the evidence is called to the attention of the trial  
 12 judge and of counsel before the jury has commenced deliberations, counsel still  
 13 may do whatever can be done to mend his case. But if the court and counsel learn  
 14 of such a claim for the first time after verdict, both are ambushed and nothing can  
 15 be done except by way of a complete new trial. It is contrary to the spirit of our  
 procedures to permit counsel to be sandbagged by such tactics or the trial court to  
 be so put in error.

16 *Id.* Here, the parties addressed the factual predicate for a punitive damage award before  
 17 Electropura presented its evidence. Accutek maintained that Electropura was required to  
 18 offer evidence of net worth in order to avoid a situation where the jury would, otherwise,  
 19 pull a number out of the air. This statement reveals a correct recitation of California law,  
 20 *i.e.*, that evidence of Accutek's net worth was required for the jury to assess punitive  
 21 damages against Accutek.<sup>3</sup> Meanwhile, Electropura took the position that it was not  
 22 required to introduce evidence of Accutek's net worth to support a punitive damage  
 23 award and failed to offer such proof because it had none. Certainly, Accutek's argument  
 24 drew both the Court and Electropura's attentions to the alleged deficiencies in the  
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 27 <sup>3</sup> Plaintiffs must demonstrate three factors to uphold an award of punitive damages: (1) reprehensibility  
 28 of the conduct; (2) the amount of punitive damages must be proportional to the compensatory damages;  
 and (3) the financial condition of the defendant. *Neal v. Farmers Ins. Exchange*, 21 Cal.3d 910, 928  
 (1978). To prove punitive damages, all three factors must be satisfied by evidence at trial.

1 evidence regarding Accutek's net worth while Electropura still the opportunity to correct  
2 them.

3       There is nothing in the record to suggest that Accutek ambushed or sandbagged  
4 Electropura, and Electropura cannot complain that it was lulled into complacency  
5 regarding the sufficiency of the evidence which it intended to offer. *See Splitt v. Deltona*  
6 *Corp.*, 662 F.2d 1142, 1143–45 (5th Cir. 1981) (Unit B) (objection to jury charge on  
7 punitive damages sufficed as predicate to motion for judgment notwithstanding the  
8 verdict “[s]ince all parties had notice of the basis for [movant’s] concern, Rule 50’s  
9 purpose had been served.”). The Court finds that Accutek’s statements during the  
10 colloquy qualify as a Rule 50(a) motion for judgment as a matter of law on punitive  
11 damages.

#### 12                   i.       **Timing of Accutek’s Statements**

13       Prior to the 2006 amendment of Rule 50, a Rule 50(a) was required at the close of  
14 all of the evidence. *See Farley Transportation Company, Inc. v. Santa Fe Trail*  
15 *Transportation Company*, 786 F.2d 1342, 1347 (9th Cir. 1985). However, in 2006, Rule  
16 50(b) was amended “deleting the requirement that a motion be made at the close of all the  
17 evidence.” Rule 50, advisory committee’s note to 2006 amendment. It was recognized  
18 that an earlier motion “informs the opposing party of the challenge to the sufficiency of  
19 the evidence and affords a clear opportunity to provide additional evidence that may be  
20 available.” *Id.*

21       Even before the 2006 amendment, there was one recognized exception to the  
22 requirement for a Rule 50(a) motion at the close of all of the evidence – namely, where  
23 an earlier motion for a directed verdict has been taken under advisement by the trial  
24 judge. The trial court’s reservation of a ruling on a motion for a directed verdict made  
25 before the close of all the evidence maintains the motion as a continuing objection to the  
26 sufficiency of the evidence, provides notice to the opposing party of the challenge, and  
27 constitutes a judicial indication that renewal of the motion is not necessary to preserve the  
28 moving party’s rights. *See, e.g., Ebker v. Tan Jay International, Ltd.*, 739 F.2d 812, 823

(2d Cir. 1984). *See generally* 5A Moore, Federal Practice ¶ 50.08, at 50–79. Here, during the colloquy, the Court advised Accutek that “we will have time afterwards for briefing” (ECF No. 158-2 at 9) and then after the jury returned its punitive damage award, the Court again told the parties that the pending motions were under submission. (ECF No. 128 at 38.) These statements taken together had the effect of taking Accutek’s position as a continuing objection and taking it under submission.

In any event, the policies underlying a Rule 50(b) renewed motion for judgment as a matter of law have been abundantly satisfied in this case. Electropura had notice of deficiencies in its punitive damages case before it presented its punitive damages case and the Court took Accutek’s arguments regarding these deficiencies under submission to permit Accutek to amplify its arguments following trial. *Cf. Farley Transportation Company, Inc. v. Santa Fe Trail Transportation Company*, 786 F.2d 1342, 1347 (9th Cir. 1985) (a proper Rule 50(a) motion may be based on a “request for a jury instruction directing the jury to return a verdict in favor of the moving party” or “an objection to a jury instruction on the ground that insufficient evidence was presented on an issue to allow it to be submitted to the jury”).

In view of the above, the Court finds that Accutek’s statements during the colloquy qualify as a Rule 50(a) motion; that the present Rule 50(b) motion is timely<sup>4</sup>; and that Electropura failed to provide proof on Accutek’s financial condition, an essential element in supporting a claim for punitive damages.<sup>5</sup>

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<sup>4</sup> Accutek asserts that its Renewed Motion is timely because no judgment has been entered, and Rule 50(b) requires that a renewed motion be made “[n]o later than 28 days after the entry of judgment.” (ECF No. 158-1 at 5:22-27.) Electropura does not dispute this assertion.

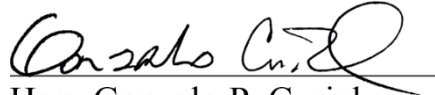
<sup>5</sup> The Court incorporates by reference its discussion in its earlier order regarding the necessary elements required to support a punitive damages award. *See* ECF No. 157 at 22-24.

1 **III. Conclusion**

2 Accordingly, the Court **GRANTS** Accutec's Renewed Judgment as a Matter of  
3 Law on the issue of punitive damages.

4 **IT IS SO ORDERED.**

5 Dated: April 23, 2020

6   
7 Hon. Gonzalo P. Curiel  
United States District Judge